

By: Klick

H.B. No. 2116

A BILL TO BE ENTITLED

AN ACT

relating to informal dispute resolutions for violations of health and safety standards at certain long-term care facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 247.051(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner by rule shall establish an informal dispute resolution process to address disputes between an assisted living ~~[a]~~ facility and the commission ~~[department]~~ concerning a statement of violations prepared by the commission ~~[department]~~ in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the commission ~~[department]~~ of the violation of a standard or standards;

(2) that the ~~[commission to complete the]~~ process be completed not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;

(3) that, not later than the 10th business day after the date an assisted living facility requests an informal dispute

1 resolution, the commission ~~[department]~~ forward to the assisted  
2 living facility a copy of all information that is referred to in the  
3 disputed statement of violations or on which a citation is based in  
4 connection with the survey, inspection, investigation, or other  
5 visit, including any notes taken by or e-mails or messages sent by a  
6 commission employee involved with the survey, inspection,  
7 investigation, or other visit and excluding the following  
8 information:

9 (A) the name of any complainant, witness, or  
10 informant, which must be redacted from information provided to the  
11 assisted living facility;

12 (B) any information that would reasonably lead to  
13 the identification of a complainant, witness, or informant, which  
14 must be redacted from information provided to the assisted living  
15 facility;

16 (C) information obtained from or contained in the  
17 records of the facility;

18 (D) information that is publicly available; or

19 (E) information that is confidential by law;

20 (4) that ~~[the commission to give]~~ full consideration  
21 is given to all legal and factual arguments raised during the  
22 informal dispute resolution process ~~[that:~~

23 ~~[(A) are supported by references to specific~~  
24 ~~information that the facility or department relies on to dispute or~~  
25 ~~support findings in the statement of violations; and~~

26 ~~[(B) are provided by the proponent of the~~  
27 ~~argument to the commission and the opposing party];~~

1           (5) that full consideration is given during the  
2 informal dispute resolution process [~~staff give full~~  
3 ~~consideration~~] to the information provided by the assisted living  
4 facility and the commission [~~department~~];

5           (6) that ex parte communications concerning the  
6 substance of any argument relating to a survey, inspection,  
7 investigation, visit, or statement of violations under  
8 consideration not occur between the informal dispute resolution  
9 staff and the assisted living facility or the commission  
10 [~~department~~]; [~~and~~]

11           (7) that the assisted living facility and the  
12 commission [~~department~~] be given a reasonable opportunity to submit  
13 arguments and information supporting the position of the assisted  
14 living facility or the commission [~~department~~] and to respond to  
15 arguments and information presented against them;

16           (8) that the commission bears the burden of proving  
17 the violation of a standard or standards; and

18           (9) that a witness statement provided by an assisted  
19 living facility be given the same presumption of truth as a witness  
20 statement provided by the commission, including a witness statement  
21 contained in a statement of deficiencies, provided that the  
22 assisted living facility and the commission may challenge the  
23 reliability of any witness statement based on the records presented  
24 during the course of the informal dispute resolution process.

25           (c) An assisted living facility requesting an informal  
26 dispute resolution under this section must reimburse the commission  
27 [~~department~~] for any costs associated with the commission's

1 ~~[department's]~~ preparation, copying, and delivery of information  
2 requested by the facility.

3 (d) A statement of violations prepared by the commission  
4 ~~[department]~~ following a survey, inspection, investigation, or  
5 visit is confidential pending the outcome of the informal dispute  
6 resolution process. Information concerning the outcome of a  
7 survey, inspection, investigation, or visit may be posted on any  
8 website maintained by the commission ~~[department]~~ while the dispute  
9 is pending if the posting clearly notes each finding that is in  
10 dispute.

11 SECTION 2. Section [531.058](#), Government Code, is amended by  
12 amending Subsections (a) and (a-1) and adding Subsection (d) to  
13 read as follows:

14 (a) The executive commissioner by rule shall establish an  
15 informal dispute resolution process in accordance with this  
16 section. The process must provide for adjudication by an  
17 appropriate disinterested person of disputes relating to a proposed  
18 enforcement action or related proceeding of the commission under  
19 Section [32.021](#)(d), Human Resources Code, or ~~[the Department of~~  
20 ~~Aging and Disability Services]~~ under Chapter [242](#), [247](#), or [252](#),  
21 Health and Safety Code. The informal dispute resolution process  
22 must require:

23 (1) an institution or facility to request informal  
24 dispute resolution not later than the 10th calendar day after  
25 notification by the commission ~~[or department, as applicable,]~~ of  
26 the violation of a standard or standards; and

27 (2) the completion of ~~[commission to complete]~~ the

1 process not later than:

2 (A) the 30th calendar day after receipt of a  
3 request from an institution or facility, other than an assisted  
4 living facility, for informal dispute resolution; or

5 (B) the 90th calendar day after receipt of a  
6 request from an assisted living facility for informal dispute  
7 resolution.

8 (a-1) As part of the informal dispute resolution process  
9 established under this section, the commission shall contract with  
10 an appropriate disinterested person ~~[who is a nonprofit~~  
11 ~~organization]~~ to adjudicate disputes between an institution or  
12 facility licensed under Chapter 242, Health and Safety Code, or a  
13 facility licensed under Chapter 247, Health and Safety Code, and  
14 the commission ~~[Department of Aging and Disability Services]~~  
15 concerning a statement of violations prepared by the commission  
16 ~~[department]~~ in connection with a survey conducted by the  
17 commission ~~[department]~~ of the institution or facility. Section  
18 2009.053 does not apply to the selection of an appropriate  
19 disinterested person under this subsection. The person with whom  
20 the commission contracts shall adjudicate all disputes described by  
21 this subsection.

22 (d) The rules adopted by the executive commissioner under  
23 Subsection (a) that relate to a dispute described by Section  
24 247.051(a), Health and Safety Code, must incorporate the  
25 requirements of Section 247.051, Health and Safety Code.

26 SECTION 3. This Act takes effect September 1, 2017.